

TESTIMONY OF HON. ERMA VIZENOR
CHAIRWOMAN, WHITE EARTH RESERVATION TRIBAL COUNCIL
BEFORE THE NATIONAL INDIAN GAMING COMMISSION
September 19, 2006

Commissioner Hogen, Associate Commissioner Choney, and NIGC Staff-- thank you for the opportunity to testify here today as to the adverse impacts the proposed Class II gaming regulations under consideration by the NIGC will have on my Tribe and our members.

Indian gaming has been of tremendous benefit to a few tribes, of modest benefit to many tribes. We are one of the Tribes who have benefited modestly from Indian gaming. We are a remote, rural Indian Tribe with a large Tribal population. For us every dollar counts.

We have a relatively large reservation that has been subjected to massive non-Indian land grabs that have greatly diminished our trust land base over the years. In other words, we have a "checkerboard" Reservation. Because of this, White Earth, with the assent of the NIGC, has used all the authority available within the four corners of IGRA, to regulate charitable gaming on our reservation, and license Class II machines at "off-site," non- trust land locations within the Reservation. The bulk of this gaming consists of Class II bingo gaming machines and pull tabs. These machines are very popular and generate significant revenue for our Tribe. These machines also allow us to regulate the charitable gaming at these locations, making even more gaming revenue available to our tribal government.

If the NIGC adopts the proposed rule as currently drafted, it would have a devastating impact on our Class II gaming operations. First of all, the games we currently operate will not comply with

the new proposed regulations. We will need to replace our current games with different ones. This will come at a tremendous cost to us. In addition, the new games we will be forced to use as replacements under the proposed regulations will operate at much slower speeds and the display and entertainment features of the games will be dramatically altered and diminished. Quite frankly, games available under the new regulations simply may not be viable. This significant source of revenue would be lost to our Tribe.

Public Record, but not Verbal Testimony:

The proposed regulation will greatly handcuff any pull tab type games by prohibiting any player terminal from accumulating credits or cash. Our players will have to redeem any pull tab winnings from a clerk and cannot merely transfer credits between machines. This will greatly diminish player flexibility made available through modern cash less technology and may well render these games unacceptable to our players. (See proposed reg. 546.7)

The proposed NIGC regulations also redefine (actually dramatically limit in real and significant ways) the statutory term “game of bingo”. As the NIGC is well aware, Courts have declared that the three statutory criteria for the game of bingo “constitute the sole legal requirement for the game of bingo”. The NIGC seeks to ignore this statutory and judicial definition and, through administrative action, redefine bingo in ways that dramatically limit the statutory and judicial definition. Examples include: the requirement of the use of a five by five grid cards, which would mean 25 spaces (See proposed reg. 546.4 (c); games can use ball draws numbered 1 through 75 (See proposed reg. 546.5 (a); imposes mandatory time periods to the play of bingo which are wholly unsupported by current law ((See proposed reg. 546.5 (i) ; imposes the requirement of non-instantaneous

ball releases which must take 2 seconds each (See proposed reg. 546.5 (c)); eliminates the auto-daub option and imposes time limits on the daub feature which requires 2 seconds of daub time before a subsequent release of numbers (See proposed reg. 546.5 (i)); Shrinks alternative and entertainment displays to no more than ½ of the display face (See proposed reg.546.4) Cumulatively all of these imposed restrictions will dramatically slow the play of the game, lessen the entertainment appeal and could easily render these games unacceptable to our players.

In addition, the statutory reference of “games similar to bingo” as a separate class of gaming available to the Tribes, would effectively be eliminated by merging the definition of “bingo” and “game similar to bingo” into a single definition in the proposed regulations (See proposed reg. 546.3 (a))

Frankly, we have no idea why the NIGC is currently contemplating these regulatory changes. The current set of regulations concerning Class II gaming have been consistently opposed by the Department of Justice. Justice has frequently sued Tribes in an effort to emasculate the current Class II regulations. Every time they have lost. Despite this attack by DOJ, at least 2 different Federal Circuit Courts of Appeals have decided that the present regulatory scheme is proper and legal. Public Record, not Verbal Testimony: The 9th Circuit Court of Appeals in *United States v. 103 Electronic Gaming Devices*, 223 F.3rd 1091 (9th Cir, 2000) and the 10th Circuit Court of Appeals in *United States v. 162 Magamania Gambling Devices*, 231 F. 3rd 713 (10th Cir. 2000) make very clear that Tribes are not limited to “traditional” bingo type games and that appealing and popular games used in Indian Country are perfectly legal.

It appears that what the NIGC is proposing to do is to accomplish through administrative fiat what The Department of Justice has failed to achieve through litigation—that is to overturn administratively what Federal Courts have already confirmed as legal. In other words, Congress has spoken, and the Courts have definitively interpreted the statute. What we see happening is the NIGC attempting to amend the IGRA statute through administrative regulation. This strikes us as a very underhanded, indeed unconstitutional, way of achieving a result that would work to the stunning disadvantage of many tribes.

If the NIGC and the Department of Justice really feel that the current statutory Class II scheme is not proper and needs to be changed, let's debate the issue in the United States Congress. Each party with an interest in this issue can make our best case. In this public forum the best arguments will prevail. This strikes us as a fairer, more open and evenhanded way of resolving the issue than through a Regulatory process the administration alone decides. And we could be terribly disadvantaged by your decision.

These regulations are complex and technical but this is not theoretical issue for us. It is real and fearsome. Let me put it bluntly. Because of the revenues we are deriving from these Class II gaming machines, including off site gaming, we are able to fund the following 3 programs in spite of continually shrinking federal assistance, and contrary to the federal trust responsibility for our lands and members.

Elderly Nutrition;

Tribal Ambulance Service; and

Youth Athletics Programs

Should the NIGC adopt as final the proposed rule as currently drafted, 2 of these 3 programs will have to be eliminated. Should you finalize the proposed rule, please help me. Advise me as to which of these programs you would cut if you were in my position. Your final decision is that real for us. We hope this testimony helps bring this reality home to the NIGC.

Thank you for considering White Earth's views on this very important matter.